IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2006

CORAM

THE HONOURABLE MR. JUSTICE P.SATHASIVAM

C.R.P.(PD)No.949 of 2006
& MP No.1 of 2006

1.Chinnaiyan

2.Jeyaraman .. Petitioners

Vs.

P.Marappan .. Respondent

Civil Revision Petition under Article 227 of the Constitution of India against the order dated 07.11.2005 made in I.A.No.624 of 2005 in O.S.No.754 of 2004 on the file of the District Munsif, Namakkal.

For petitioners : Mr.R.Subramanian

For respondent : No appearance

ORDER

The above Civil Revision petition is directed against the order of the learned District Munsif, Namakkal, dated 07.11.2005 made in I.A.No.624 of 2005 in O.S.No.754 of 2004, in and by which, the learned Judge has refused to condone the delay of 128 days in filing the petition to set aside the ex-parte decree. The defendants are the petitioners.

2. Heard the learned counsel for the petitioner. Though the respondent-plaintiff was served notice from this Court, he has not chosen to contest the revision by engaging a counsel.

3. The only point for consideration is as to whether the petitioners-defendants have sufficient cause for condoning the delay of 128 days in filing the petition to set aside the ex-parte decree.

4. In the affidavit filed in support of the above application, apart from disputing the claim regarding agreement, payment of money etc., both the defendants were not served summons from the Court. It is also stated that only on hearing the news

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from their villagers, they enquired and came to know about the ex-parte decree. It is seen from the order of the Court below that the defendants had refused to receive summons on many occasions and finally they were set ex-parte. The learned counsel appearing for the petitioners-defendants, after verifying the said endorsement/endorsements, has contended before this Court that there is an endorsement only to the effect that "gone out". It is not clear whether any further effort/efforts were taken for service of summons on the petitioners/defendants. Considering the relief prayed for in the suit and also taking note of the fact that though a sum of Rs.35,000/- was paid on the date of the agreement and for payment of balance amount of Rs.5,000/- two years time was granted, I am of the view that the petitioners/defendants can be given an opportunity to contest the suit on merits. I am also satisfied that the petitioners have shown sufficient cause for the delay. The Court below has not adverted to these relevant aspects while dismissing the said petition. Accordingly, the order passed by the learned District Munsif, Namakkal, dated 07.11.2005 in I.A.No.624 of 2005 in O.S.No.754 of 2004 is set aside and the Civil Revision Petition is allowed. No costs. M.P.1 of 2006 is closed.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The District Munsif, Namakkal.

2.The Record Keeper, VR Section, High Court, Madras.

LA(CO)
SR/8.12.2006 CRP PD No.949 of 2006

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